

REMARKS

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

Although claims 4-5, 8-13 and 51 are withdrawn, applicants request that they be rejoined to the case on allowance of the generic or linking claim (claims 1 and 7).

The rejection of claims 1, 3, and 6-7 under 35 U.S.C. § 102(a) or (b) as anticipated by Riemen et al., J. Physiology, 509P:81P (1998) is respectfully traversed.

Riemen relates to the defective nucleoside triphosphate synthesis in plasma membranes derived from tracheal epithelium of CFTR null mice. Riemen does not teach or suggest methods of classifying disease states or of determining if a patient has or is being treated for cystic fibrosis. Further, Riemen does not teach or suggest the particular steps of the present invention.

In addition, Riemen is not available as a reference against the claims of the present application. In particular, Riemen is not prior art under 35 U.S.C. § 102(a) or (b).

Attached hereto is a email message from Linda Rimmer, employee of the Physiology Society, which handles publication of the J. Of Physiology (See webpage physoc.org and jp.physoc.org). In this email, in response to the undersigned attorney's request for publication information, Ms. Rimmer indicates that Riemen was not published prior to the April 27-29, 1998 meeting. This lack of prepublication is confirmed by the Declaration of Anil Mehta Under 37 CFR § 1.132 (¶4). Thus, Riemen was not described in a printed publication more that one year prior to the filing date of the present application. The present application was filed as a continuation of PCT/GB00/00736, filed March 2, 2000, claiming priority to U.S. Provisional Patent Application 60/122,426, filed March 2, 1999.

Accordingly, Rieman is not available as prior art under 35 U.S.C. § 102(b).

Further, Riemen is not a work of "others" before the date of invention by the current applicants. As set out in the Declaration of Anil Mehta Under 37 CFR § 1.132 (¶5), co-authors Riemen, Ratcliff, Colledge and Evans, were under the direction and control of co-inventor Mehta. Accordingly, Riemen is describing applicants' own work and is the Declaration is sufficient to remove the publication as a reference under 35 U.S.C. § 102(a). Manual of Patent Examining Procedure 715.01©), In re Katz, 687 F.2d 450, 215 USPQ 14 (CCPA 1982).

Accordingly, as Riemen is not available as a reference against the claims of the present application, the rejection of claims 1, 3 and 6-7 based on Riemen is improper and should be withdrawn.

The rejection of claims 1-3 and 6-7 under 35 U.S.C. § 112(second paragraph) for indefiniteness is traversed in view of the above amendment.

In view of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

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I hereby certify that this document is being deposited with the U.S. Postal Service as first class mail on 8/25/05 under 37 CFR 1.8 and is addressed to the Commissioner for Patent, PO Box 1450, Alexandria, VA 22313-1450

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